

The Special Court in 's-HERTOGENBOSCH, Second Panel,

Administering the law in the case of the Chief Prosecutor of that Court against:

ALFRED RICHARD DOWSTONER,

born 12th. October 1913 in FROBEN, living ⁱⁿ HERRINGEN (Germany);
in provisional custody in the HUIS VAN VERBODING, 's-HERTOGENBOSCH;

In view of the citation served on the accused and containing a statement of the act with which he has been charged and the circumstances connected with it;

In view of the investigation at the sitting of 13th. April 1946;

Having heard the demand of the Chief Prosecutor to the effect that the accused be sentenced to FOUR Years' imprisonment with deduction of the time already spent in detention;

Having heard the accused, who was assisted in his defence by DR. Th. I. K. M. HILVERMAN, advocate, AMSTERDAM;

Considering that the accused is summoned to stand his trial on the charge: that he in 1944, in the Netherlands, at anyrate in EUROPE, when the Netherlands were at war with Germany, in the active military, state or public service of or for the enemy as "Beauftragter der Reichsstelle fuer Hochfrequenzforschung" (Commissioner of the State Department for Highfrequency Research) in or of the "Reichsforschungsrat" (State Research Council) was guilty, violating the laws or customs of war, of the plundering, not justified by military necessity, of property belonging to the PHILIPS INDUSTRIES Ltd. in Eindhoven, where by him accused, in association with one or more other Germans property belonging to the aforesaid PHILIPS INDUSTRIES Ltd. was stolen and carried away, namely materials and apparatus to a total value of f. 15563,50, at anyrate to some amount, namely and particularly by way of example, drilling machines, turning lathes, one or more oscillographs, one or more oscillators, a short wave transmitter, a precision wave measurer, divers bulbs, divers valves, one or more crystal detectors, and a stock of gold to the value of f. 400.-

Considering that Counsel for the accused has raised the question of the nullity of the citation on the ground that this contains only one qualification, namely "plundering" and no factual specification of what is comprised in that plundering;

Considering that the Court rejects this objection however;

Considering indeed that - quite apart from the fact that the Court very certainly need cause present to accord more factual significance to the word "plundering" appearing in the citation - ~~an~~ ^{an} adequate specification of the plundering charged can be seen in the clause "where by him, accused, in association with one or more other Germans property belonging to the aforesaid PHILIPS INDUSTRIES Ltd. was stolen and carried away";

Considering that with regard to the act charged the Court ^{and} does not consider that legal and convincing evidence has been produced of this ^{on} that account the accused must be acquitted;

Considering that the accused acted in his function of "Beauftragter der Deutschen Wehrmacht Kommandiert bei den Bevollmachtigten der Reichsstelle fuer die Hochfrequenzforschung" (Captain in the German Wehrmacht detailed by the Authorised Agent of the State Department for Highfrequency Research);

-considering-

(2)

Considering that the "plundering" is charged and so it must be proved that all materials and apparatus attached to in the operation were carried off and taken away by the accused in a way to constitute "plundering";

Considering that it must therefore be examined what it is to be understood by "plundering" as this was meant in the context;

Considering that the writer of the opinion obviously had article 17 of the Declaration of the Peace Decree in mind when making the charge of "plundering";

Considering that this article was inserted in the Decree in violation of the law of 20th July 1917, **State Book II 253**;

Considering that according to the preamble of this law the explanation which made this law desirable reads:

"that it is necessary to make a legal provision with regard to the taking of persons who in the service of or for the enemy have been guilty of war crimes or crimes against humanity";

Considering that from this it already follows that the said law contains provisions of international law, which is shown the more clearly by the aforementioned article 17 which for the specification of the article made punishable there refers to article 6 under (b) and (c) of the Charter;

Considering therefore that for determining the meaning of "plundering" article 15 of the Military Penal Code and article 12 of the German "Verordnung über die Vernehmung der Militär Strafgeschworenen vom 10 October 1910" (Decree on the Composition of the Military Penal Code of 10th Oct. 1910) can be further referred to, but that the existing provisions of international law on this point will be the decisive factor here;

Considering in this connection that the following are of interest:

1. article 17 of the Rules of Land Warfare which contains "Plundering is expressly forbidden", and
2. the Inter-Allied declaration of 5th January 1915 which stated that "any transfer of or dealing with property rights are avoided, adding "this varying applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form.....";

Considering that from what has been weighed above the Court thinks it may assume that what is meant in the citation by "plundering" comprises all robbery and thefts by the enemy to the detriment of the occupied territory, even if this is effected in an ordinary legal way;

Considering that it has been definitely established as the signifying that such theft did take place with regard to part of the goods attached to the operation, especially of those articles in which Professor **BRUNO**'s subordinates, DR. **WIDMER** and DR. **MURTER**, said they were not interested, the fact of this theft appearing among other things from the characteristic words referred each time by the accused when an object was of no interest to the accused persons according to their statements to witness **ALBERT** who was giving them round hand helms as **WIDMER** (for **WIDMER** than!) saying which he had the articles concerned packed up and taken along;

Considering that it also follows from what has been weighed above that the is not a question of plundering when it is a question, applying article 17 of the Rules of Land Warfare, of the seizure of goods which are of great importance for military operations;

- considering -

Considering now that according to the statement made by the expert witness Professor KUCH a large number of the apparatus and materials carried off by the accused were of great significance for radar research and therefore, as witness EBAU also argued, of the greatest importance for the enemy's military operations;

Considering that in view of the accurate way in which notes were made of them, the accused signing the lists concerned, the taking away of these goods must be regarded or at any rate placed on the same footing as the seizure in question of the previous consideration, and therefore in relation to these goods at least there is no talk of plundering;

Considering that in these circumstances where the citation only mentions separately and by way of "Example" certain of the articles taken off, the charge cannot be accepted as proved now that it has been definitely established that a considerable quantity of the "materials and apparatus" in question were not carried off or stolen by "plundering";

Considering that the Court - superfluously here, for the accused must be acquitted on other grounds - wishes further to give it as its opinion that the accused cannot in his excuse appeal to an order given him by his Superior to take the things mentioned in the citation;

Considering that it has appeared from the statement made by this superior, Professor EBAU, that the order given only covered those things which were of importance for the Hochfrequenz Forschung, while it has been established that the accused took and carried away many more things on his own initiative;

Administering the Law:

Acquits the accused of the charge brought against him:

Orders his immediate release.

Judgment passed by:

DR. J. E. FORRIK
DR. J. H. JACQUE
J. A. G. VAN ANDEL

President
Judge
Military Judge,

in the presence of

Dr. R. J. WITTHAM, Deputy clerk of the court, and pronounced at the public sitting of the aforesaid ^{court} on 17th April 1943.

IN THE NAME OF THE QUEEN

The Special Court in 's-HERTOGENBOSCH, Second Panel,

Administering the law in the case of the Chief Prosecutor of that Court against:

ALFRED RICHARD BOEMTCHER,

born 12th. October 1913 in PFORZHEIM, living ⁱⁿ ~~out~~ HERFORDINGEN (Germany);
in provisional custody in the HUIS VAN BEWARING, 's-HERTOGENBOSCH;

In view of the citation served on the accused and containing a statement of the act with which he has been charged and the circumstances connected with it;

In view of the investigation at the sitting of 13th. April 1948;

Having heard the demand of the Chief Prosecutor to the effect that the accused be sentenced to FOUR Years' imprisonment with deduction of the time already spent in detention;

Having heard the accused, who was assisted in his defence by DR. Th. I. K. M. HILTERMAN, advocate, AMSTERDAM;

Considering that the accused is summoned to stand his trial on the charge: that he in 1944 in the Netherlands, at anyrate in EUROPE, when the Netherlands were at war with Germany, in the active military, state or public service of or for the enemy as "Beauftragter der Reichsstelle fuer Hochfrequenzforschung" (Commissioner of the State Department for Highfrequency Research) in or of the "Reichsforschungsrat" (State Research Council) was guilty, violating the laws or customs of war, of the plundering, not justified by military necessity, of property belonging to the PHILIPS INDUSTRIES Ltd. in Eindhoven, where by him accused, in association with one or more other Germans property belonging to the aforesaid PHILIPS INDUSTRIES Ltd. was stolen and carried away, namely materials and apparatus to a total value of f. 15563,50, at anyrate to some amount, namely and particularly by way of example, drilling machines, turning lathes, one or more oscillographs, one or more oscillators, a short wave transmitter, a precision wave measurer, divers bulbs, divers valves, one or more crystal detectors, and a stock of gold to the value of f. 400.-

Considering that Counsel for the accused has raised the question of the nullity of the citation on the ground that this contains only one qualification, namely "plundering" and no factual specification of what is comprised in that plundering;

Considering that the Court rejects this objection however;

Considering indeed that -quite apart from the fact that the Court very certainly sees cause present to accord more factual significance to the word "plundering" appearing in the citation - ~~an adequate~~ specification of the plundering charged can be seen in the clause "where by him, accused, in association with one or more other Germans property belonging to the aforesaid PHILIPS INDUSTRIES Ltd. was stolen and carried away";

Considering that with regard to the act charged the Court does not consider that legal and convincing evidence has been produced of this ^{and} on that account the accused must be acquitted;

Considering that the accused acted in his function of "Hauptmann der Deutschen Wehrmacht Kommandiert bei den Bevollmaechtigten der Reichsstelle fuer die Hochfrequenzforschung" (Captain in the German Wehrmacht detailed by the Authorised Agent of the State Department for Highfrequency Research);

-considering-

(2)

Considering that ~~only~~ "plundering" is charged and so it must be proved that all materials and apparatus alluded to in the citation were carried off and taken away by the accused in a way to constitute plundering;

Considering that it must therefore be examined what is to be understood by "plundering" as this was meant in the citation;

Considering that the writer of the citation obviously had article 27 A of the Extraordinary Penal Law Decree in mind when making the charge of "plundering";

Considering that this article was inserted in the Decree in question by the Law of 20th. July 1947, State Book H 233;

Considering that according to the preamble of this law the consideration which made this law desirable reads:
"that it is necessary to make a legal provision with regard to the trying ~~of~~ of persons who in the service of or for the enemy have been guilty of war crimes or crimes against humanity";

Considering that from this it already follows that the said law contains provisions of international law, which is shown the more clearly by the aforementioned article 27 a which for the specification of the acts made punishable there refers to article 6 under (b) and (c) of the Charter;

Considering therefore that for determining the meaning of "plundering" article 153 of the Military Penal Code and article 129 of the German "Verordnung ueber die Verfassung des Militair Strafgesetzbuches vom 10 Oktober 1940 (Decree on the Composition of the Military Penal Code of 10th Oct. 1940)" can be further referred to, but that the existing provisions of international law on this point will be the decisive factor here;

Considering in this connection that the following are of interest

1. article 47 of the Rules of Land Warfare which contains "Plundering is expressly forbidden", and
2. the Inter-Allied Declaration of 5th. January 1943 which stated that "any transfer of or dealings with, property rights----" are invalid, adding "This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form.....";

Considering that from what has been weighed above the Court thinks it may assume that what is meant in the citation by "plundering" comprises all robbery and thefts by the enemy to the detriment of the occupied territory, even if this is attired in an outwardly legal garb;

Considering that it has been definitely established at the sitting that such theft did take place with regard to part of the goods alluded to in the citation, especially of those articles in which Professor EBAU's subordinates, DR. FISCHER and DR. BURGER, said they were not interested, the plan of this theft appearing among other things from the characteristic words repeated each time by the accused when an object was of no interest to the aforesaid persons according to their statements to witness JANSEN who was showing them round "dann heisst es BOETTCHER (for BOETTCHER then)" saying which he had the articles concerned packed up and taken along;

Considering that it also follows from what has been weighed above that there is not talk of plundering when it is a question, applying article 53 of the Rules of Land Warfare, of the seizure of goods which are of great importance for military operations;

-considering-

Considering now that according to the statement made by the expert witness Professor HOLST a large number of the apparatus and materials carried off by the accused were of great significance for radar research and therefore, as witness ESAU also argued, of the greatest importance for the enemy's military operations;

Considering that in view of the accurate way in which notes were made of them, The accused signing the lists concerned, the taking away of these goods must be regarded or at anyrate placed on the same footing as the seizure in question of the previous consideration, and therefore in relation to these goods at least there is no talk of plundering;

Considering that in these circumstances where the citation only mentions separately and by way of "Example" certain of the articles taken off, the charge cannot be accepted as proved now that it has been definitely established that a considerable quantity of the "materials and apparatus" in question were not carried off or stolen by "plundering";

Considering that the Court - superfluously here, for the accused must be acquitted on other grounds - wishes further to give it as its opinion that the accused cannot in his excuse appeal to an order given him by his Superior to take the things mentioned in the citation;

Considering that it has appeared from the statement made by this superior, Professor ESAU, that the order given only covered those things which were of importance for the Hochfrequenz Forschung, while it has been established that the accused took and carried away many more things on his own initiative;

Administering the Law:

Acquits the accused of the charge brought against him:

Orders his immediate release.

Judgment passed by:

DR. J.E. POERINK
DR. J.H. JACOBS
J.A.G. VAN ANDEL

President
Judge
Military Judge,

in the presence of

Dr. K.J. MWITLOX, deputy clerk of the court, and pronounced at the public sitting of the aforesaid ^{court}, 27 th April 1948.